

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANK CUSTABLE,

Plaintiff

v.

Case No. 5:17-cv-13541

District Judge John Corbett O'Meara

Magistrate Judge Anthony P. Patti

LISA ZABORSKI,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR
LEAVE TO EFFECTUATE SERVICE VIA ELECTRONIC MAIL (DE 6)**

Judge O'Meara has referred this case for all pretrial matters. Plaintiff is incarcerated at FCI Milan and brings state law claims (common law fraud, conversion, and action for an accounting) against sole Defendant Lisa Zaborski, described as the individual to whom Plaintiff provided a certain amount of money to care for "the parties childrens' [sic] needs" (DE 1 at 1.) Although Plaintiff cites 28 U.S.C. § 1331 ("Federal question") as the basis for this Court's jurisdiction, the Court assumes Plaintiff intended to cite 28 U.S.C. § 1332, which addresses diversity, as the parties are purportedly citizens of different states.

Currently before the Court is Plaintiff's December 20, 2017 motion for leave to effectuate service via electronic mail, in which he claims his efforts to effectuate

service have been unsuccessful. According to Plaintiff, Defendant has “refused certified mail.” (DE 6).

Unfortunately, Plaintiff does not: (1) provide supporting documentation of his unsuccessful service attempts; (2) explain why more traditional means of alternative service would not suffice; (3) provide any specifics relating to the proposed electronic service or the e-mail address to be used; and/or (4) explain how and why his proposed method of electronic service is reasonably calculated to give Defendant actual notice of the proceedings and an opportunity to be heard, so as to comport with due process. *See FKA Distrib. Co. v. YISI Tech. Co.*, No. 17-cv-10226, 2017 WL 4129538, at *1 (E.D. Mich. Sept. 19, 2017). Moreover, his motion was filed only 7 days after Judge O'Meara directed him to complete service documents to be used for service of process by the USMS. (DE 5). Upon consideration, Plaintiff's motion (DE 6) is **DENIED** without prejudice to renewal. Should the motion be renewed, Plaintiff will be required to: **(a)** show the Court that he has complied with Judge O'Meara's order *and* the USMS has been unsuccessful in its attempt to effect service upon Defendant, **and (b)** address the issues referenced above, with a supporting affidavit or declaration as to his prior attempts at service, and provide specific information relating to the proposed e-mail address or other electronic means to be used, in compliance with 28 U.S.C. § 1746 (“Unsworn declarations under penalty of perjury”).

IT IS SO ORDERED.

Dated: January 22, 2018

s/Anthony P. Patti
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on January 22, 2018, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Anthony P. Patti